

United States
Circuit Court of Appeals

For the Ninth Circuit.

C. D. BELL,

Appellant,

vs.

APACHE MAID CATTLE COMPANY, a corporation, BABBITT BROTHERS TRADING COMPANY, a corporation, THE ARIZONA LIVESTOCK LOAN COMPANY, a corporation, and H. V. WATSON,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the
United States for the District of Arizona.

FILED

FEB - 4 1937

PAUL P. O'BRIEN,



United States
Circuit Court of Appeals
For the Ninth Circuit.

C. D. BELL,

Appellant,

vs.

APACHE MAID CATTLE COMPANY, a corporation, BABBITT BROTHERS TRADING COMPANY, a corporation, THE ARIZONA LIVESTOCK LOAN COMPANY, a corporation, and H. V. WATSON,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

NORRIS & PATTERSON,

First National Bank Building,

Prescott, Arizona,

GEORGE T. WILSON,

STROUSS & SALMON,

Title & Trust Building,

Phoenix, Arizona,

Attorneys for Appellant.

WILSON, WOOD & COMPTON,

JAMES E. BABBITT,

Flagstaff, Arizona,

Attorneys for Appellees. [3]

In the United States District Court for the District
of Arizona.

September 1935 Term

At Prescott

MINUTE ENTRY

Of January 4, 1936.

(Prescott Equity Minutes)

Honorable ALBERT M. SAMES, United States
District Judge, Presiding.

E-181

C. D. BELL,

Plaintiff,

vs.

APACHE MAID CATTLE COMPANY, a corpora-
tion, BABBITT BROTHERS TRADING
COMPANY, a corporation, THE ARIZONA
LIVESTOCK LOAN COMPANY, a corpora-
tion, H. V. WATSON, F. A. SILCOX,
Defendants.

Defendants' Motions to Dismiss Plaintiff's Com-
plaint; to Strike Portions of and to Make Portions
of Plaintiff's Complaint more Definite and Certain,
come on regularly for hearing this day.

Messrs. Norris and Patterson, by Charles L. Ew-
ing, Esquire, appear as counsel for Plaintiff. No
appearance is made on behalf of Defendants.

IT IS ORDERED that said Motions be contin-
ued and reset for hearing Saturday, February 1,
1936, at the hour of 9:30 o'clock, A. M. [4]

[Title of Court.]

Sept. 1935 Term

At Prescott

MINUTE ENTRY

Of February 8, 1936

(Prescott Equity Minutes)

Honorable JAMES H. BALDWIN, United States
District Judge, Specially Assigned, Presiding.

[Title of Cause.]

Motions of Defendants, Apache Maid Cattle Company, a corporation, Babbitt Brothers Trading Company, a corporation, The Arizona Livestock Loan Company, a corporation, and H. V. Watson, to Dismiss Plaintiff's Complaint; to Strike Portions of Plaintiff's Complaint, and to Make Portions of Plaintiff's Complaint More Definite and certain, come on regularly for hearing this day.

Messrs. Norris and Patterson, by Charles L. Ewing, Esquire, appear as counsel for Plaintiff. No appearance is made on behalf of Defendants.

Upon motion of Charles L. Ewing, Esquire, and upon his representation that counsel for Defendants consent,

IT IS ORDERED that said Motions be continued and reset for hearing Saturday, March 7, 1936, at the hour of 9:30 o'clock, A. M. [5]

[Title of Court.]

March 1936 Term

At Prescott

MINUTE ENTRY

Of March 7, 1936.

(Prescott Equity Minutes.)

Honorable JAMES H. BALDWIN, United States
District Judge, Specially Assigned, Presiding.

[Title of Cause.]

Motions of Defendants, Apache Maid Cattle Company, a corporation, Babbit Brothers Trading Company, a corporation, The Arizona Livestock Loan Company, a corporation, and H. V. Watson, to Dismiss Plaintiff's Complaint; to strike Portions of Plaintiff's Complaint, and to Make Portions of Plaintiff's Complaint more definite and certain, and Plaintiff's Motion to Dismiss as to Defendant, F. A. Silcox, and Plaintiff's Petition for Leave to file Amended Complaint, come on regularly for hearing this day.

Messrs. Norris and Patterson, by John R. Franks, Esquire, appear as counsel for Plaintiff. No appearance is made on behalf of Defendants.

Upon motion of said counsel for Plaintiff,

IT IS ORDERED that said Motions and Petition be continued and reset for hearing Saturday, April 4, 1936, at the hour of 9:30 o'clock, A. M., at Prescott, Arizona. [6]

[Title of Court.]

March 1936 Term

At Prescott

MINUTE ENTRY

Of April 11, 1936

(Prescott Equity Minutes)

Honorable HAROLD LOUDERBACK, United States District Judge, Specially Assigned, Presiding.

[Title of Cause.]

Defendants' Motions to Dismiss Complaint; to Strike Portions of Complaint and to make Portions of Complaint more definite and Certain; and Plaintiff's Petition to Dismiss Complaint as to Defendant, F. A. Silcox, and for leave to file Amended Complaint, come on regularly for hearing this day.

Messrs. Norris and Patterson, by W. E. Patterson, Esquire, appear as counsel for Plaintiff. No appearance is made on behalf of Defendants.

Upon motion of W. E. Patterson, Esquire, and upon his representation that counsel for Defendant consents thereto,

IT IS ORDERED that Plaintiff be granted leave to file an amended Complaint. [7]

[Title of Court and Cause.]

AMENDED COMPLAINT.

Comes now the plaintiff and for his bill of complaint and cause of action against the defendants, and each of them, alleges:

I.

That during all dates and times hereinafter mentioned the plaintiff herein, C. D. Bell, has been and is now a citizen and resident of the State of Michigan; that the defendants herein, Apache Maid Cattle Company, Babbitt Brothers Trading Company, and The Arizona Livestock Loan Company, were and are now corporations duly incorporated, organized, and existing under and by virtue of the laws of the State of Arizona, and each of said defendant corporations was and is now a citizen and resident of said state; that defendant, H. V. Watson, has been and is now a citizen and resident of the State of Arizona; that said defendant corporations were and are governed and controlled by the same officers and directors; and that the defendant, H. V. Watson, is an officer, director, and the managing agent of each of said three corporations, and was and is now in charge and control of the said corporations so far as the matters hereinafter alleged relate. [8]

II.

That the grounds upon which the jurisdiction of this court depends are the diversity of citizenship

of the parties hereto, the full names, citizenships, and residences of the parties to this action being as set forth above; and the amount in controversy, exclusive of interest and cost, exceeding the sum of \$3,000.00.

III.

That prior to the 31st day of January, 1931, the plaintiff herein was the owner of certain real property adjacent to, and of certain improvements on the Coconino National Forest located in Coconino and Yavapai Counties, State of Arizona, together with approximately forty head of cattle ranging and running on said Forest under permit from the United States Forestry Service, and at said time was desirous of acquiring approximately 960 additional head of cattle together with additional grazing range and area on said Forest, to accommodate and maintain such additional cattle.

IV.

That at the dates and times of the transactions hereinafter mentioned, and prior thereto, the defendants and each of them, and particularly the Apache Maid Cattle Company, were engaged in the cattle business and, among other things, were the owners of 283 acres of patented land adjacent to, and of certain improvements on said Forest and used and maintained by them in connection with said cattle business; and were permittees of said Forest holding a permit from said Forest Service

under which they had the right to graze, run and maintain on said Forest 3,174 head of cattle, and as such permittees had the right to relinquish therefrom a sufficient number of head to leave unoccupied or unpermitted sufficient range for the running thereon of 960 head of cattle. [9]

V.

There heretofore and on or about the 31st day of January, 1931, defendants and each of them by and through the defendant, H. V. Watson, acting for himself and on behalf of defendant corporations, and the plaintiff herein entered into a contract, which said contract was partially written and partially oral; and by the terms of said contract it was understood and agreed between plaintiff and defendants, subject to the consent and approval of the United States Forestry service and the officials thereof, that defendants would sell, convey and deliver to plaintiff their said patented lands and their said improvements on said Forest together with sufficient range and area on said Forest to graze, run, and maintain throughout the year not less than 960 head of cattle net by relinquishing from their said permit on said Forest sufficient range and area to so graze, run and maintain said number of cattle; and that the plaintiff would purchase the same and pay to defendants therefor the sum of \$16.00 per head for said cattle, the sum of \$4,700 for said improvements, and the sum of \$2,830 for said patented land, or a total of \$22,890.

VI.

That at the time of entering into said contract and prior thereto said Forest Service had, unknown to the plaintiff, informed defendant, Apache Maid Cattle Company, that it would be required to reduce its number of cattle and grazing preference because of the overgrazed condition of said Forest; and at the time of entering into said contract, defendants, and each of them, well knew and understood that unless defendants fully met and absorbed the reduction required by said Forest Service out of other of their said cattle running on said Forest, the requirements of said Forest Service would extend to and affect the relinquishment of range for the grazing and [10] running of 960 head of cattle to be acquired by plaintiff pursuant to said contract, by greatly reducing the number of cattle said plaintiff would actually be permitted to graze, run or maintain on said Forest, and defendants further knew and understood at said time that, in order for said defendants to comply fully with the terms of said contract and to relinquish to plaintiff sufficient range and area on said Forest to graze and run 960 head of cattle and to cause same to be allotted to him by said Forestry Service, they would in fact have to relinquish many more than said number, all of which was unknown to plaintiff, and all of which was at all times concealed by the defendants from the plaintiff.

VII.

That thereafter plaintiff paid to defendants the

sum of \$22,890 provided to be paid by said contract, and plaintiff otherwise fully performed all the terms of said contract on his part to be kept and performed; and in reliance on said contract and on the complete performance thereof by defendants and each of them, plaintiff expended a vast sum of money in the erection of fences, developments of water, and installation of other necessary improvements on the range and area on said Forest Reserve relinquished by defendants as hereinafter mentioned to graze and maintain 960 actual head of cattle, the exact amount of which said expenditures is difficult to estimate.

VIII.

That said defendants on their part conveyed said patented land and said improvements in Paragraph IV in this amended complaint mentioned to plaintiff as required by the terms of said contract and pretended to relinquish sufficient range on said Forest to graze, run and maintain 960 head of cattle, and defendants advised and informed plaintiff that they had executed the necessary instruments whereby said Forest Service did allot [11] to him range and area on said Forest sufficient to graze, run and maintain 960 head of cattle net, as provided in said contract, but, due to the said reduction in the number of defendants' cattle running on said Forest, as so ordered by said Forest Service, and the failure of defendants to absorb said reduction out of their remaining cattle on said For-

est, the said pretended relinquishment of 960 head of cattle was reduced by 320 head, and said defendants did in fact relinquish, and said Forest Service did allot to plaintiff, range and area sufficient to graze, run and maintain not more than 640 head of cattle, all of which was well known to, and understood by the defendants, and each of them, at the time of said pretended relinquishment. That during the month of October, 1933, plaintiff for the first time discovered the deception and fraud so practiced upon him by said defendants, and that defendants had not fully performed the terms of their said contract; that plaintiff thereupon immediately demanded of the defendants, and each of them, that they make further and proper relinquishment of additional area and range on said Forest, in order that there might be transferred by the Forest Service to plaintiff range and area sufficient to graze, run and maintain 960 head of cattle on said Forest as provided for in said contract and as paid for by plaintiff; but defendants, and each of them have failed, neglected and refused so to do, although during all times in this amended complaint mentioned, said defendants, and each of them, have been, and are now, well able to fully perform the terms of said contract on their part to be kept and performed.

IX.

That the United States Forestry Service and the officials thereof have heretofore consented to, and

approved and do now consent to the relinquishment by defendant of range on said Forest sufficient to graze, run and maintain 960 actual [12] head of cattle, and the granting and allotting of same by said Forest Service to plaintiff.

X.

That as a direct result and consequence of the failure and refusal of defendants, and each of them, to relinquish to said Forest Service range and area thereon, sufficient to graze, run and maintain an additional 320 head of cattle, to be allotted to plaintiff, as hereinbefore mentioned, said plaintiff has been, and is now, damaged in the sum of \$5,120.

XI.

That each of said defendants has some interest in and to the permits, stock and range upon the said Coconino National Forest hereinbefore referred to, the exact interest, or the extent thereof, being to the plaintiff unknown; and the other defendants have some interest in the said permits, stock and ranges of said defendant, Apache Maid Cattle Company, but the exact interest, or the extent thereof, is to plaintiff unknown.

XII.

That plaintiff has no plain, speedy or adequate remedy at law.

WHEREFORE, plaintiff prays for a judgment and decree of this Court wherein and whereby it is adjudged and decreed:

1. That the defendants and each of them specifically perform the terms of said contract and that they, or one of them, be required to forthwith relinquish from the number of cattle now held in their names as permitted stock upon said Forest sufficient in number so as to warrant, authorize and require the United States Forest Service to allot and grant unto plaintiff a permit for 320 head of additional cattle, thus increasing his permit to 960 head to range upon the Forest [13] throughout each year during the life of said permit and any additional thereof.

2. That in the event specific performance of said contract cannot be had, then that plaintiff have judgment against defendants, and each of them, for damages for breach of contract in the sum of \$5,120.00.

3. That in either event plaintiff have and recover judgment of and from defendants, and each of them, for plaintiff's costs and disbursements incurred in this action; and for such other and further relief as to the Court may seem just, necessary and proper in the premises.

W. E. PATTERSON,

GEO. T. WILSON,

Attorneys for Plaintiff. [14]

State of Arizona

County of Maricopa—ss.

C. D. BELL, being first duly sworn deposes and says that he is the plaintiff mentioned and described in the foregoing amended complaint; that

he has read said amended complaint and knows the contents thereof; that all the matters, things, and allegations therein contained are true in substance and in fact of his own knowledge except those matters therein alleged upon information and belief, and of such matters he believes the same to be true.

(Sgd.) C. D. BELL.

Subscribed and sworn to before me this 29th day of February, 1936.

[Seal] (Sgd) RICHARD MINNE.

My commission expires March 4, 1938. [15]

[Endorsed]: Filed Apr 11 1936. [16]

[Title of Court and Cause.]

JOINT AND SEVERAL MOTION OF THE DEFENDANTS TO DISMISS THE AMENDED BILL OF COMPLAINT HEREIN.

Now come the defendants Apache Maid Cattle Company, Babbitt Brothers Trading Company, The Arizona Livestock Loan Company, and H. V. Watson, and jointly and severally move the Court to dismiss the amended bill of complaint herein, upon the following grounds:

I.

That the amended bill of complaint does not state facts sufficient to constitute a valid cause of action at law or in equity against said defendants or against any of them.

II.

That it appears from the face of said amended bill of complaint that said amended bill of complaint is wholly without equity.

III.

That the amended bill of complaint does not state facts sufficient to entitle the plaintiff to any relief.

IV.

That it appears in the amended bill of complaint that the plaintiff is not entitled to any relief arising from the facts alleged in said complaint. [17]

V.

That the amended bill of complaint does not state facts sufficient to entitle the plaintiff to specific performance of said alleged contract as set forth in said amended bill of complaint against said defendants or any of them.

VI.

That it appears from the face of said amended bill of complaint that the plaintiff is not entitled to specific performance of the contract set forth in said amended bill of complaint against the defendants or any of them.

VII.

That it appears from the face of said amended bill of complaint that the contract therein alleged, and which is the basis of action, is illegal and void, and is unenforceable, and that said plaintiff is not entitled to any relief thereunder.

VIII.

That it appears from the face of said amended bill of complaint that the cause of action is stale, and that so long a time has passed since the matters and things complained of took place, it would be contrary to equity and good conscience for this Court to take cognizance thereof.

WHEREFORE, defendants pray that the whole of the amended bill of complaint may be dismissed, and that the said defendants may be hence dismissed with their costs in their behalf incurred, and for such other and further relief as to the Court may seem just.

Dated this 23rd day of May, 1936.

JAMES E. BABBITT,
WILSON, WOOD and
COMPTON,

C. B. WILSON,
CHANDLER M. WOOD,
ORINN C. COMPTON,

Attorneys for Defendants. [18]

[Endorsed]: Filed May 28, 1936. [19]

[Title of Court.]

March 1936 Term

At Prescott

MINUTE ENTRY

Of June 6, 1936

(Prescott Equity Minutes)

Honorable F. C. JACOBS, United States District
Judge, Presiding.

[Title of Cause.]

Defendants' Motion to Dismiss Amended Complaint, and to make Portions of Plaintiff's Amended Complaint more Definite and Certain, come on regularly for hearing this day.

No appearance is made on behalf of Plaintiff.

Messrs. Wilson, Wood & Compton, by Charles L. Ewing, Esquire, appear as counsel for Defendants.

Upon motion of said counsel for Defendants,

IT IS ORDERED that said motions be continued and reset for hearing at the next call of the Law and Motion Calendar at Prescott, Arizona. [20]

[Title of Court.]

March 1936 Term

At Prescott

MINUTE ENTRY

Of July 6, 1936

(Prescott Equity Minutes)

Honorable DAVE W. LING, United States

District Judge, Presiding.

[Title of Cause.]

Defendants' Motions to Dismiss Amended Complaint, and to Make Portions of Amended Complaint more Definite and Certain, come on regularly for hearing this day.

George T. Wilson, Esquire, appears as counsel for Plaintiff. Messrs. Wilson, Wood and Compton, by Chandler M. Wood, Esquire, and C. B. Wilson, Esquire, appear as counsel for Defendants.

Defendants' Motions to Dismiss Amended Complaint, and to Make Portions of Amended Complaint more definite and Certain, are duly argued by Chandler M. Wood, Esquire, and George T. Wilson, Esquire, and

IT IS ORDERED that said Motions to Dismiss and to Make Portions of Amended Complaint More Definite and Certain, be submitted and by the Court taken under advisement.

Upon motion of George T. Wilson, Esquire,

IT IS ORDERED that Plaintiff be allowed to file Memorandum of Authorities on sufficiency of Amended Complaint on or before July 9, 1936. [21]

[Title of Court.]

March 1936 Term

At Prescott

MINUTE ENTRY

Of July 22, 1936.

(Prescott Equity Minutes)

Honorable DAVE W. LING, United States

District Judge, Presiding.

[Title of Cause.]

Defendants' Motion to Dismiss Plaintiff's Amended Complaint, having heretofore been argued, submitted and by the Court taken under advisement, and the Court having duly considered the same, and being fully advised in the premises,

IT IS ORDERED that said Motion be granted, and that an exception be entered on behalf of Plaintiff. [22]

[Title of Court and Cause.]

NOTICE THAT PLAINTIFF STANDS ON HIS
AMENDED COMPLAINT.

To WILSON, WOOD & COMPTON and JAMES
E. BABBITT, attorneys for defendant and to the
Clerk of the United States District Court, in and
for the District of Arizona:

You, and each of you, will please take notice that
the plaintiff, C. D. Bell, elects to stand upon his
amended complaint herein.

NORRIS & PATTERSON,

Attorneys for Plaintiff. [23]

[Endorsed]: Filed Oct 14 1936. [24]

In the United States District Court for the District
of Arizona

October 1936 Term

At Phoenix

MINUTE ENTRY

Of October 15, 1936.

(Prescott Equity Minutes)

Honorable DAVE W. LING, United States
District Judge, Presiding.

E-181

C. D. BELL,

Plaintiff,

vs.

APACHE MAID CATTLE COMPANY, a corporation; BABBIT BROTHERS TRADING COMPANY, a corporation; THE ARIZONA LIVESTOCK LOAN COMPANY, a corporation; H. V. WATSON, and F. A. SILCOX,
Defendants.

No appearance is made on behalf of Plaintiff. Messrs. Strouss and Salmon, by Charles L. Strouss, Esquire, appear as counsel for Defendants.

Thereupon, IT IS ORDERED that Plaintiff's Amended Bill of Complaint be dismissed, and that an exception be entered on behalf of the Plaintiff.

[25]

[Title of Court and Cause.]

NOTICE OF APPEAL.

NOTICE is hereby given that the plaintiff, C. D. Bell, appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the decree entered in the above cause on the 15th day of October, 1936.

NORRIS & PATTERSON,

W. E. PATTERSON,

First Nat. Bk. Bldg.,

Prescott, Ariz.,

STROUSS & SALMON,

619 T. & T. Bldg.,

Phoenix, Ariz.,

CHARLES L. STROUSS,

RINEY B. SALMON,

Attorneys for Plaintiff. [26]

[Endorsed]: Filed Dec 7 1936. [27]

[Title of Court & Cause.]

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable Dave W. Ling, Judge of the District Court of the United States for the District of Arizona:

The plaintiff, C. D. Bell, feeling himself aggrieved by the decree made and entered in this cause on the 15th day of October, 1936, and by the proceedings had prior thereunto in this cause, does hereby appeal from said decree to the Circuit Court of

Appeals for the Ninth Circuit for the reasons specified in the assignments of error, which is filed herewith, and said plaintiff prays that this appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that the Court fix a bond for costs.

NORRIS & PATTERSON,

W. E. PATTERSON,

First Nat. Bk. Bldg.,

Prescott, Ariz.,

STROUSS & SALMON,

CHARLES L. STROUSS,

RINEY B. SALMON,

619 T. & T. Bldg.,

Phoenix, Ariz.,

Attorneys for Plaintiff. [28]

[Endorsed]: Filed Dec 7 1936. [29]

[Title of Court and Cause.] .

ASSIGNMENTS OF ERROR.

And now comes the plaintiff, C. D. Bell, and says that in the record proceedings and decree in this cause there is manifest error in this, to-wit:

First. The Court erred in granting the motion of the defendants, Apache Maid Cattle Company,

a corporation, Babbitt Brothers Trading Company, a corporation, the Arizona Livestock Loan Company, a corporation, and H. V. Watson, and each of them, to dismiss the amended complaint herein for the reasons (a) that said amended complaint alleges facts sufficient to constitute a cause of action against said defendants, and each of them, within the equity jurisdiction of the United States District Court for the District of Arizona and entitling the plaintiff to relief by a decree for the specific performance of a contract, (b) that, if said amended bill is insufficient to give equity jurisdiction, a cause of action at law is stated requiring the cause to be transferred to the law side of the Court.

Second. The Court erred in entering a decree in favor of the defendants Apache Maid Cattle Company, a corporation, Babbitt Brothers Trading Company, a corporation, The Arizona [30] Livestock Loan Company, a corporation, H. V. Watson, and each of them, and against the plaintiff for the reason (a) that said amended complaint alleges facts sufficient to constitute a cause of action against said defendants, and each of them, within the equity jurisdiction of the United States District Court for the District of Arizona and entitling the plaintiff to relief by a decree for the specific performance of a contract, (b) that, if said amended bill is insufficient to give equity jurisdiction, a cause of action at law is stated requiring the cause to be transferred to the law side of the Court.

WHEREFORE, plaintiff prays that said decree be reversed.

NORRIS & PATTERSON,
 W. E. PATTERSON,
 First Nat. Bk. Bldg.,
 Prescott, Ariz.,
 STROUSS & SALMON,
 CHARLES L. STROUSS,
 RINEY B. SALMON,
 619 T. & T. Bldg.,
 Phoenix, Ariz.,
 Attorneys for Plaintiff. [31]

[Endorsed]: Filed Dec 7 1936. [32]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

The petition of the plaintiff, C. D. Bell, having been filed and presented to this Court, wherein it is prayed that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit upon the judgment, orders and rulings in this cause be allowed, and it appearing to the Court that the assignments of error concerning said appeal have been duly filed, and that said appeal should be allowed,

NOW, THEREFORE, IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree here-

tofore entered in this cause on the 15th day of October, 1936, be and the same is, hereby allowed.

IT IS FURTHER ORDERED that the transcript of the record and proceedings, duly authenticated, be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that the bond for costs be, and is hereby, fixed in the sum of Seven hundred fifty (\$750.00) Dollars.

Done in open Court this 7th day of December, 1936.

DAVE W. LING,
Judge United States
District Court. [33]

[Endorsed]: Filed Dec 7 1936. [34]

[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, C. D. Bell as principal and Hartford Accident and Indemnity Company, a corporation, as surety, are held and firmly bound unto Apache Maid Cattle Company, a corporation, Babbitt Brothers Trading Company, a corporation, The Arizona Livestock Loan Company, a corporation, and H. V. Watson, and each of them, in the full and just sum of Seven hundred fifty (\$750.00) Dollars, to be paid to the said Apache Maid Cattle Company, a corporation, Babbitt Brothers Trad-

ing Company, a corporation, The Arizona Livestock Loan Company, a corporation, and H. V. Watson, and each of them, their attorneys, successors or assigns; to which payment, well and truly to be made, we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals and dated this 7th day of December, 1936.

Whereas, lately at a District Court of the United States, for the District of Arizona, in a suit depending in said Court between C. D. Bell vs. Apache Maid Cattle Company, a corporation, et als. a decree was rendered against the said C. D. Bell and the said C. D. Bell having obtained an appeal and filed [35] a copy thereof in the Clerk's office of said Court to reverse and correct the decree in the aforesaid suit, and a citation directed to the said Apache Maid Cattle Company, a corporation, Babbitt Brothers Trading Company, a corporation, The Arizona Livestock Loan Company, a corporation, and H. V. Watson, citing and admonishing them, and each of them, to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held at the City of San Francisco, State of California, in said Circuit on the 6th day of January, 1937.

Now the condition of the above obligation is such that if the said C. D. Bell shall prosecute his appeal to effect, and answer all damages and costs if he fails to make his plea good, then the above obliga-

tion to be void; else to remain in full force and effect.

C. D. BELL,
Principal.

HARTFORD ACCIDENT &
INDEMNITY CO.,

[Seal]

R. S. CONDIT,

Surety,

Attorney in fact.

Approved by

DAVE W. LING,

United States District Judge.

December 7, 1936. [36]

[Endorsed]: Filed Dec 7 1936. [37]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk:

You are requested to take a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal to be allowed in the above entitled cause and to include in such transcript of record the following and no other papers or exhibits, to-wit:

Amended Bill of Complaint.

Motion to dismiss filed on behalf of defendant, Apache Maid Cattle Company, a corporation.

Motion to dismiss filed on behalf of defendant, Babbitt Brothers Trading Company, a corporation.

Motion to dismiss filed on behalf of defendant, The Arizona Livestock Loan Company, a corporation.

Motion to dismiss filed on behalf of defendant, H. V. Watson.

Notice that plaintiff stands on amended bill of complaint.

Clerk's minute entries.

Decree.

Petition for allowance of appeal.

Assignments of error. [38]

Order allowing appeal.

Citation on appeal.

Notice of appeal.

Bond on appeal.

This praecipe.

Respectfully,
 NORRIS & PATTERSON,
 W. E. PATTERSON,
 First Nat. Bk. Bldg.,
 Prescott, Ariz.,
 STROUSS & SALMON,
 CHARLES L. STROUSS,
 RINEY B. SALMON,
 619 T. & T. Bldg.,
 Phoenix, Ariz.,
 Attorneys for Plaintiff. [39]

[Endorsed]: Filed Dec. 7, 1936. [40]

[Title of Court.]

United States of America

District of Arizona—ss:

I, EDWARD W. SCRUGGS, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of C. D. Bell, Plaintiff, versus Apache Maid Cattle Company, a corporation, Babbitt Brothers Trading Company, a corporation, The Arizona Livestock Loan Company, a corporation, H. V. Watson and F. A. Silcox, Defendants, numbered E-181 Prescott, on the docket of said Court.

I further certify that the attached pages, numbered 1 to 40, inclusive, contain a full, true and correct transcript of the proceedings of said cause and all the papers filed therein, together with the endorsements of filing thereon, called for and designated in the praecipe filed in said cause and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk, in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying to this said transcript of record amounts to the sum of \$5.00 and that said sum has been paid to me by counsel for the appellant.

I further certify that the original citation issued in the said cause is hereto attached and made a part of this record.

WITNESS my hand and the seal of the said Court this 31st day of December, 1936.

[Seal]

EDWARD W. SCRUGGS,

Clerk. [41]

[Title of Court and Cause.]

CITATION ON APPEAL.

The United States of America.

The President of the United States to Apache Maid Cattle Company, a corporation, Babbitt Brothers Trading Company, a corporation, The Arizona Livestock Loan Company, a corporation, H. V. Watson, and each of them, James E. Babbitt, Wilson, Wood & Compton, C. B. Wilson, Chandler M. Wood and Orinn C. Compton, their attorneys, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, State of California, on the 6th day of January, A. D. 1937 pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Arizona, wherein C. D. Bell is appellant and Apache Maid Cattle Company, a corporation, Babbitt Brothers Trading Company, a corporation, The Arizona Livestock Loan Company, a corporation, and H. V. Watson are appellees, and show cause, if any there be, why the decree entered in said cause should

not be corrected and why speedy justice should not be done in that behalf. [42]

WITNESS the Honorable Dave W. Ling, Judge of the United States District Court this 7 day of December, in the year of our Lord one thousand nine hundred and thirty-six, and of the Independence of the United States of America the one hundred and sixty-first.

[Seal] DAVE W. LING,
United States District Judge.
[43]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Arizona—ss:

I hereby certify and return that I served the annexed Citation on Appeal on the therein-named H. V. Watson by handing to and leaving a true and correct copy thereof with H. V. Watson personally at Flagstaff in said District on the 27th day of December, A. D. 1936.

B. J. McKINNEY,
U. S. Marshal.
By ROLAND MOSHER,
Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
District of Arizona—ss:

I hereby certify and return that I served the annexed Citation on Appeal on the therein-named Apache Maid Cattle Co., by serving John G. Bab-

bitt, Vice President of said Co., Babbitt Bros. Trading Co., by serving John G. Babbitt, Lands Director of said Co., Arizona Livestock Loan Co., by serving John G. Babbitt, Director of said Co., by handing to and leaving a true and correct copy thereof with John G. Babbitt personally at Flagstaff in said District on the 9th day of December, A. D. 1936.

B. J. McKINNEY,

U. S. Marshal.

By ROLAND MOSHER,

Deputy.

[Endorsed]: Filed Dec. 30, 1936. [44]

[Endorsed]: No. 8433. United States Circuit Court of Appeals for the Ninth Circuit. *C. D. Bell*, Appellant, vs. *Apache Maid Cattle Company*, a corporation, *Babbitt Brothers Trading Company*, a corporation, *The Arizona Livestock Loan Company*, a corporation, and *H. V. Watson*, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed January 4, 1937.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.